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TO: Tom Montgomery
FROM: Keith C. Dennen
RE: Handguns and the Law
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Guns, or more specifically when and where a person can carry a gun, have been a hot topic lately. The Tennessee General Assembly has struggled to enact laws that balance the Second Amendment rights of citizens and the need to protect children at schools and on playgrounds and governmental employees at work. Since 2014, the Tennessee General Assembly has enacted six separate laws dealing with guns and public property. Four of those laws were enacted in 2016.

SUMMARY:

- Generally, law enforcement officers can carry weapons anywhere, including school property.
- Firearms of any kind are generally prohibited on school property. Exceptions do apply.
- Persons with handgun carry permits may have handguns in their cars parked in parking lots on government property (including school property) or as they drop off/pickup passengers so long as the handguns are not visible and the handguns are not used.
- Governmental entities can prohibit firearms and ammunition in cars they own or control if they adopt a policy.
- Governmental entities can prohibit all weapons on property owned or controlled if they post notices.
- A person (even a person with a handgun carry permit) cannot have a handgun on any property being used at the time by a school for an athletic or school-related event.

DEFINITIONS:

Handguns and rifles are treated differently in some circumstances. Both handguns and rifles are “firearms” under Tennessee law.¹

What is a handgun? Any firearm with a barrel length of less than twelve inches (12") that is designed, made or adapted to be fired with one (1) hand.²

Who can lawfully have possession of a firearm in Tennessee? Any person, except a person:

- a. convicted of felony or a misdemeanor crime of domestic violence;³
- b. subject to an order of protection;⁴
- c. prohibited from possessing a firearm under any other state or federal law.⁵

Can a juvenile lawfully possess a handgun? Yes, in some limited circumstances.⁶

- Attending firearms or hunter safety courses,
- Using a handgun at an established range
- Engaging in organized competition
- Hunting or trapping with a valid license
- When at the juvenile’s residence with permission of parent or guardian
- When accompanied by his or her parent/guardian and being instructed on use
- On real property under control of an adult if the juvenile has the permission of his parent or guardian and the adult who controls the property.
- When traveling to or from any of the foregoing, but only if the gun is unloaded.

POSSESSION IN AUTOMOBILES.

Can a handgun be carried in a car? Yes, so long as the person is in lawful possession of the car.⁷

Can a county or governmental entity prohibit its employees from carrying handguns in cars the entity owns? Yes. The law specifically says that a county or any other governmental entity can prohibit any person from carrying a gun in a car owned or leased by the entity. But, the entity must adopt a written policy prohibiting firearms or ammunition in those cars.⁸

¹ Tenn. Code Ann. § 39-11-106(a)(11).

² Tenn. Code Ann. § 39-17-1301

³ Tenn. Code Ann. § 39-17-1307(e)(1)(A).

⁴ Tenn. Code Ann. § 39-17-1307(f)(1)(B).

⁵ Tenn. Code Ann. § 39-17-1307(e)(1)(A) (citing 18 U.S.C. § 922(g) and Tenn. Code Ann. § 39-17-1316).

⁶ Tenn. Code Ann. § 39-17-1319(d).

⁷ Tenn. Code Ann. § 39-17-1307(e)(1)(B).

⁸ Tenn. Code Ann. § 39-17-1307(e)(2)(i) & Tenn. Code Ann. § 39-17-1313(c).

Can a county or other governmental entity prohibit anyone from having a firearm in the person's vehicle if that vehicle is parked on government property?

Under Tennessee law, any handgun carry permit holder can store a firearm or firearm ammunition in his or her vehicle so long as:

- The vehicle is parked in a designated parking area (on public or private property);
- The firearm or ammunition is stored and locked in the trunk, glove box, or interior of the vehicle (out of view), or in a container securely affixed to the vehicle; and
- The firearm and ammunition is kept from "ordinary observation" when the person is in the vehicle⁹.

What about vehicles on school property. The same rules for possession of a firearm in a parked vehicle on government property apply to school property. The owner must be a non-student adult.¹⁰ A person who enters school property solely for the purpose of delivering or picking up a passenger can also have a firearm in the vehicle; but only if, the firearm is not removed from the vehicle or utilized while on the property.¹¹

COURTROOMS.

Can a person bring a gun into a courtroom? Yes, but only if the person is a police officer, prison guard, bailiff, court officer or member of the armed forces performing official duties. In addition, the court can allow a firearm into the courtroom if it is evidence in a case. Judges with carry permits may have handguns in courtrooms, but only if they keep the handgun concealed. Remember: a courtroom is any room in which a judicial proceeding is occurring. So, a courtroom is not limited to a courthouse.¹²

OTHER GOVERNMENT PROPERTY.

Can a governmental entity prohibit weapons on its property? Yes, any governmental entity can prohibit possession of guns by any person (including persons with carry permits) at meetings conducted by the entity. In addition, an entity can prohibit guns on premises owned, operated, managed or under control of the governmental entity.¹³ If the entity elects to prohibit guns, the governmental entity must post notices of this prohibition in prominent locations, including all entrances to buildings and property.¹⁴

⁹ Tenn. Code Ann. § 39-17-1313(a).

¹⁰ Tenn. Code Ann. § 39-17-1309(c)(1)(B).

¹¹ Tenn. Code Ann. § 39-17-1310(4) & Tenn. Code Ann. § 39-17-1311(b)(1)(J)(iv).

¹² Tenn. Code Ann. § 39-17-1306.

¹³ Tenn. Code Ann. § 39-17-1315(b)(2) & § 39-17-1359(a).

¹⁴ Tenn. Code Ann. § 39-17-1315(b)(2) & § 39-17-1359(b). Specifically, the law requires:

(A) A sign shall be used as the method of posting. The sign shall include the phrase "NO FIREARMS ALLOWED", and the phrase shall measure at least one inch (1") high and eight inches (8") wide. The sign shall also include the phrase "As authorized by T.C.A. § 39-17-1359".

(B) The sign shall include a pictorial representation of the phrase "NO FIREARMS ALLOWED" that shall include a circle with a diagonal line through the circle and an image of a firearm inside the circle under the diagonal line. The entire pictorial representation shall be at least four inches (4")

SCHOOL PROPERTY.

Can firearms be present on school property or at athletic events? The answer depends upon the person and the nature of the property. The law provides different rules for School Property and for or Recreational Property.

What is School Property? School Property includes:

- any school building or bus,
- any portion of the school campus or grounds,
- any other property owned or operated by a school or board of education, or
- any other property while in use by any board of education or school.

School Property includes athletic fields or recreation facilities.¹⁵ The owner of the property does not matter. It is the use by the school or board of education that makes the property “School Property.”

What is Recreational Property? Recreational Property includes:

- any public park or playground,
- any civic center or other building facility, area or property,

if that property is owned, used or operated by any municipal, county or state government, or instrumentality thereof, for recreational purposes.¹⁶

What groups can have guns on both school or recreational property? The following groups may have guns on School Property or Recreational Property:

Military and Law Enforcement Officers. Active duty military personnel (including National Guard or Militia), state, city or county law enforcement officers and federal officers when performing official duties.¹⁷

Student Groups. ROTC students or school club or team students who have possession of firearms as a part of their training or team duties.¹⁸

Ceremonial Weapons. People who possess firearms to be used solely for instructional or school-sanctioned ceremonial purposes.¹⁹

Security Guards. Registered security guards/officers when performing official duties.²⁰

high and four inches (4") wide. The diagonal line shall be at a forty-five degree (45 degrees) angle from the upper left to the lower right side of the circle.

¹⁵ Tenn. Code Ann. § 39-17-1309(b).

¹⁶ Tenn. Code Ann. § 39-17-1311(b).

¹⁷ Tenn. Code Ann. § 39-17-1309(e)(1) – (4) & Tenn. Code Ann. § 39-17-1311(b)(1)(A) – (D).

¹⁸ Tenn. Code Ann. § 39-17-1309(e)(5) & Tenn. Code Ann. § 39-17-1311(b)(1)(E).

¹⁹ Tenn. Code Ann. § 39-17-1309(b) – (c) & Tenn. Code Ann. § 39-17-1311(b)(1)(a).

²⁰ Tenn. Code Ann. § 39-17-1309(7) & Tenn. Code Ann. § 39-17-1311(b)(1)(G).

Hunters. Hunters during the hunting season (but only on property designated by the appropriate official as hunting land). In addition, hunters, with unloaded weapons, may cross School Property or Recreational Property in order to gain access to public or private lands open to hunting unless the property is posted with “no trespassing” signs.²¹

Motor Vehicles. A person who enters School Property or Recreational Property solely for the purpose of delivering or picking up a passenger; but only if, the firearm is not removed from the vehicle or utilized while on the property.²²

Gun and Knife Show Attendees. Anyone conducting or attending a gun and knife show on school property, provided the show has been approved by the appropriate official.²³

Juveniles. Generally, persons under eighteen cannot have possession of a handgun unless accompanied by an adult or guardian. Exceptions to this prohibition include: firearms safety courses, gun ranges, organized competition, hunting and trapping, and possession on real property with the permission of the owner and the parent.²⁴

Skeet and Target Practice. A person can possess or carry a firearm for the purpose of sport or target shooting on Recreational Property designated for that purpose.

What Restrictions Apply to Parks and other Athletic Events?

General Rule. A person with a handgun carry permit may possess a handgun in any public park, natural area, historic park, nature trail, campground, greenway, waterway or other similar public place owned, operated or used by a governmental entity other than a school system.²⁵

School Property. A person (even a person with a handgun carry permit) cannot have a handgun on any property owned or operated by a board of education or a school (unless it is in a motor vehicle parked in a designated parking lot, and the firearm and ammunition are concealed).²⁶

Other Park Property. A person (even a person with a handgun carry permit) cannot have a handgun on any property **being used at the time** by a school or board of education for an athletic or school-related event. This prohibition extends to: athletic fields, football or soccer fields, tennis courts, basketball courts, running trails, and other multi-use fields.²⁷

Persons without Notice. The law allows a person who did not know that the property was owned or operated by a school, or that the property was being used for a school related activity, to leave the property immediately upon becoming aware of those facts without penalty.²⁸

²¹ Tenn. Code Ann. § 39-17-1310 (1) – (2) & Tenn. Code Ann. § 39-17-1311(b)(1)(J)(i) – (ii).

²² Tenn. Code Ann. § 39-17-1310(4) & Tenn. Code Ann. § 39-17-1311(b)(1)(J)(iv).

²³ Tenn. Code Ann. § 39-17-1310(3) & Tenn. Code Ann. § 39-17-1311(b)(1)(J)(iii).

²⁴ Tenn. Code Ann. § 39-17-1319.

²⁵ Tenn. Code Ann. § 39-17-1309(e)(8)(A) & Tenn. Code Ann. § 39-17-1311(b)(1)(H).

²⁶ Tenn. Code Ann. § 39-17-1309(e)(8)(B)(i) & Tenn. Code Ann. § 39-17-1313.

²⁷ Tenn. Code Ann. § 39-17-1309(e)(8)(B)(ii) – (iii); Tenn. Code Ann. § 1311(b)(1)(H) & Tenn. Code Ann. § 39-17-1313.

²⁸ Tenn. Code Ann. § 39-17-1309(e)(8)(B)(iii) – (iv); Tenn. Code Ann. § 1311(b)(1)(H)(ii).

Can school employees possess guns on school property? Yes, if they satisfy certain requirements.

To be eligible, the person must²⁹:

- Be a current school system faculty or staff, or a school resource officer³⁰ for the school system,
- Be a present or former law enforcement officer,
- Comply with all laws, rules and regulations of the peace officer standards and training (POST) commission,
- Successfully complete forty (40) hours in basic training in school policing (all training must be approved by the School System),
- Pay the cost of all training, firearms and ammunition,
- Possess a valid handgun carry permit, and
- Be authorized to carry a firearm on school property pursuant to a joint written authorization signed by the director of schools and the principal of the school (the right to carry is limited to the school for which the principal signed the document).

Note: The director of schools must notify the sheriff or (if the school is in city limits) the chief of police of the name and contact information of the person authorized to carry a weapon on school property (within 10 days of approval).³¹ **Special Rules apply to Wayne County and Pickett County.**³²

LAW ENFORCEMENT OFFICERS.

What Restrictions apply to Law Enforcement Officers?

Law Enforcement Officers possess the right to carry firearms at all times and in all places within Tennessee whether they are on-duty or off-duty.³³ If an off-duty law enforcement officer carries a firearm on school grounds or inside a school building during regular school hours, the officer must immediately inform the principal or an appropriate staff person that he or she is present and armed.³⁴ This authority does not apply if the officer is consuming alcohol or controlled substances or is under the influence of alcohol or controlled substances.³⁵ Further, this authority does not apply to courtrooms unless the officer is actually discharging official duties.³⁶

Law enforcement officers include³⁷:

²⁹ Tenn. Code Ann. § 49-6-815.

³⁰ Tenn. Code Ann. § 49-6-815(a)(2) requires school resource officers to be appointed pursuant to a memorandum of understanding between the chief of the appropriate law enforcement agency and the school system.

³¹ Tenn. Code Ann. § 49-6-815(c).

³² Tenn. Code Ann. § 49-6-816.

³³ Tenn. Code Ann. § 39-17-1350(a).

³⁴ Tenn. Code Ann. § 39-17-1350(a).

³⁵ Tenn. Code Ann. § 39-17-1350(c).

³⁶ Tenn. Code Ann. § 39-17-1350(c).

³⁷ Tenn. Code Ann. § 39-17-1350(d) -- (f).

- full-time state employees authorized to carry a firearm and to make arrests for violations of state law;
- full-time police officers certified by the peace officer standards and training commission;
- commissioned reserve deputy sheriffs as authorized in writing by the sheriff;
- commissioned reserve or auxiliary police officers as authorized in writing by the chief of police;
- sheriffs certified by the peace officer standards and training commission;
- any deputy sheriff employed by a county as a court officer or corrections officer;
- correctional officers, wardens, deputy wardens, and others employed by the Department of Correction; or
- Constables in counties where constables have law enforcement powers under Tennessee Code Annotated section 8-10-108, subject to certain training requirements.
- Note: In Bedford and Rutherford Counties, this exception only applies to law enforcement officers for the county or for municipalities located in the county.

NOTICES:

What notices are governmental entities required to post?

Schools. Each principal must post signs in prominent locations (including sports arenas, gymnasiums, stadiums and cafeterias) that are at least six inches (6") high and fourteen inches (14") wide, with the following notice:³⁸

FELONY. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF SIX (6) YEARS IMPRISONMENT AND A FINE NOT TO EXCEED THREE THOUSAND DOLLARS (\$3,000) FOR CARRYING WEAPONS ON SCHOOL PROPERTY.

Governmental Entities. Any governmental entity electing to prohibit firearms on its property must provide the following notices³⁹:

(A) A sign shall be used as the method of posting. The sign shall include the phrase "NO FIREARMS ALLOWED", and the phrase shall measure at least one inch (1") high and eight inches (8") wide. The sign shall also include the phrase "As authorized by T.C.A. § 39-17-1359".

(B) The sign shall include a pictorial representation of the phrase "NO FIREARMS ALLOWED" that shall include a circle with a diagonal line through the circle and an image of a firearm inside the circle under the diagonal line. The entire pictorial representation shall be at least four inches (4") high and four inches (4") wide. The diagonal line shall be at a forty-five degree (45 degrees) angle from the upper left to the lower right side of the circle.

³⁸ Tenn. Code Ann. § 39-17-1309(d)(1).

³⁹ Tenn. Code Ann. § 39-17-1315(b)(2) & § 39-17-1359(b).

Hunting. If a governmental entity desires to prohibit hunters from traveling across school property to access property for hunting purposes, the entity must post “No trespassing” signs at all major points of ingress.⁴⁰

⁴⁰ Tenn. Code Ann. §§ 39-17-1310 & 39-17-1311(b)(1)(j)